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Supreme Court, U.S.
FILED
APR 29 1970
JOHN F. DAVIS, CLERK

No. 1299

In the Supreme Court of the United States

OCTOBER TERM, 1969

In re Complaint as to the Conduct

of

PHILIP WEINSTEIN, Accused,

Petitioner.

PETITIONER'S REPLY TO BRIEF OF RESPONDENT OREGON STATE BAR

DWIGHT L. SCHWAB
FRANK H. HILTON, JR.
1200 Oregon National Building
Portland, Oregon 97205
Counsel for Petitioner

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 3-70

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The Oregon State Bar brief charges that Weinstein did not request a speedy trial. Thus, he cannot complain about the delay, citing various non-Oregon criminal cases (Bar Br. pp. 2, 11, 13).—The Bar did *not* inform this Court that in Oregon it is the sole duty of the prosecution to set a case for trial promptly. The accused in Oregon has no duty to act in order to get a case set.

The Bar recognized and acknowledged this fact and rule in its brief herein before the Oregon Supreme Court. There the Bar stated:

> "We also note that the decisions of this court [Oregon Supreme Court] thus far appear to have rejected the federal and majority state rule above cited in that they have refused to find waiver of the right to speedy trial in the mere fact that the Accused has failed to call his case for trial or to insist that it be set for any particular time. . . . *State* v. *D'Autremont*, 212 Or. 344, 350, 317 P.2d 932 (1958)." (Bar Br. Ore. Sup. Ct. pp. 27-28).

The Bar partially excuses its delay. From October, 1964 (the date of the Circuit Court of Appeals' first opinion—Ex. 147), to April, 1965 (date of dismissal of indictment against Weinstein by federal court), the Bar says it would have been "inappropriate" to act. To do so would have violated the "spirit of the injunction"—"it would have been contrary to the principles established in the 1961 injunction proceedings" (Bar. Br. pp. 4, 6, 18).—The foregoing is fallacious and misleading. In granting that injunction against the Bar in December, 1961, the three-judge federal district court specifically stated that the Bar *could at any time* thereafter prosecute all charges based on acts alleged in that indictment. This had to be obvious since at the time of the three-judge decision Weinstein had already been tried on that particular federal court indictment and had testified at the trial (see injunction opinion, Pet. Op. Br., App. D. 22, 28).

When the Bar first set the case for trial in September, 1967, Weinstein asked a postponement be-

cause his attorney had many cases previously set for trial (see motion and affidavit of counsel, Bar Br. pp. 37, 38). The Bar quotes Weinstein's counsel as saying—with emphasis added:

> " 'for it to be set over another month or so would not cause meaningful additional hardship or difficulty.' " (Bar. Br. p. 11)

This selected quote was preceded with:

> "To require that the disbarment case go to trial on September 6, 1967, would work a hardship on a number of my clients and a large number of other lawyers and clients. The Weinstein matter has been delayed for years." (Bar Br. App. D. 40)

The Bar significantly expresses "serious concern" about "some of the language" of *Spevack* v. *Klein*, 385 U.S. 511 (1967) and *In re Ruffalo*, 390 U.S. 544 (1968). However, the Bar is relieved that "the basic character" of disbarment proceedings remains "civil"—not "criminal" (Bar Br. p. 24).

Obviously, the Oregon State Bar and the Oregon Supreme Court will continue to deny lawyers their rights under the Fourteenth Amendment. They intend to continue to ignore the plain implications and language of *Spevack* and *Ruffalo*. The decision of the Oregon Supreme Court herein intentionally circumvented and ignored *Spevack* and *Ruffalo*.

If the Bar is allowed to deny Weinstein his rights under the Fourteenth Amendment as the Oregon Supreme Court says it can, this victory will not go un-

noticed by Bars in many of the other states. Bar associations do not like *Spevack* and *Ruffalo* (Bar. Br. p. 24). The decision in this case will be used as an excuse all over the country to further erode the principles therein established by this Court.

Disbarment proceedings are far from being "civil and protective," as the Bar asserts (Bar. Br. p. 24). The result is bound to be "criminal and punitive" (Bar Br. p. 24) if the Bar prevails. There is nothing very "civil" or "protective" when a man loses his only real means of livelihood for life. He has received a "sentence" that can be the equivalent of a $500,000 fine, forfeiture of his property, and public disgrace for himself and his family.

The Bar states that "this is . . . *a question of great importance.*" (Emphasis added. Bar. Br. p. 24). It is indeed!

It is particularly important to all persons who in their hour of peril need a fearless, fighting lawyer, however unpopular the cause may be; lawyers who know they cannot later be scuttled in some "*civil* and *protective*" proceeding, deprived of the usual Constitutional guarantees.

CONCLUSION

For the foregoing reasons, and for those stated in the petition, a writ of certiorari should be granted.

Respectfully submitted,

DWIGHT L. SCHWAB
FRANK H. HILTON, JR.
1200 Oregon National Building
Portland, Oregon 97205
Counsel for Petitioner